

TITLE 16. BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS

NOTICE IS HEREBY GIVEN that the Board of Vocational Nursing and Psychiatric Technicians (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held:

Date: May 12, 2009
Time: 10:00 a.m.
Department of Consumer Affairs
El Dorado Room
1625 North Market Blvd., #220
Sacramento, California 95834

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 P.M. on **Tuesday, May 11, 2009**, or must be received by the Board at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by section 144, 2841.1, 2854, 4501.1, 4503 and 4504 of the Business and Professions (B&P) Code; and to implement, interpret or make specific sections 144, 700, 701, 703, 704, 2841.1, 2847, 2854, 2867.5, 2875, 2878, 2878.6, 2878.7, 2892.1, 2892.3, 2892.5, 2895, 2895.1 and 2895.5 (Vocational Nursing Practice Act); 125.9, 152.6, 700, 701, 703, 704, 4503, 4510, 4511, 4515, 4517, 4521, 4521.2, 4523, 4544, 4545, and 4548 (Psychiatric Technicians Law); Government Code section 6157; and Penal Code section 11105 the Board is considering changes to Division 25 of Title 16 of the California Code of Regulations (CCR).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code section 2854 (VN Program) and 4504 (PT Program) authorize the BVNPT to adopt, amend, or repeal, such rules and regulations as may be reasonably necessary to enable it to carry into effect the provisions of the Vocational Nursing Practice Act and the Psychiatric Technicians Law. The BVNPT is proposing the following changes:

(1) Amend section 2504.1 (VN Program) and section 2564.1 (PT Program)

The existing regulation, adopted as an emergency, provides that the board may require a licensee to provide criminal history information and respond to the board within 30 days, provide accurate responses and make available documents and other records requested.

This proposal will amend the emergency regulation to require a licensee to respond to any inquiry made by the Board of Vocational Nursing and Psychiatric Technicians (Board) or its appointed representatives within 30 days, including inquiries regarding a licensee's criminal history. The licensee must provide true and accurate information and responses and must provide all files, working papers and other records requested. The licensee is prohibited by this section from taking

actions specifically for the purpose of obstructing the Board's efforts to gather information, investigate, or to hold hearings or other proceedings. Each of the provisions in this section will enable the Board to more effectively carry out the provisions of the Vocational Nursing Practice Act and the Psychiatric Technician Law.

To conduct an investigation on whether a conviction is substantially related to a licensee's scope of practice, the Board must review "certified" police reports, "certified" court documents and review documentation that substantiates compliance with probationary terms and rehabilitation efforts. Without this information the Board cannot make a final determination as to the appropriate action. In the past, licensees have ignored Board requests for information and purposely delayed the Board's ability to make a final decision. The emergency regulations enable and this proposal would continue to allow the Board to issue a citation and fine for failure to provide the necessary documentation in a timely manner.

The changes to this section from the emergency regulation expand on the scope of those inquires to the entire range of matters within the board's jurisdiction. By the revisions, the Board will be able to more effectively compel the responses and information in any matter within its jurisdiction, including criminal activity, continuing education audits or other types of investigations within its jurisdiction. Preventing a licensee from intentionally obstructing a court proceeding is designed to make the Board's efforts run more smoothly – the Board is better able to protect the public if licensees cooperate with the board. This proposal would enable the Board to issue a citation and fine for failure to follow its provisions, making it more likely that licensees will work with the Board to collect information.

(2) Amend section 2517.5 (VN Program) and section 2575.5 (PT Program)

Business and Professions Code Sections 2892 and 4544 provide that a licensee shall apply for renewal and pay a fee for renewal. This regulation will make permanent provisions of the emergency regulations that require, as a condition of renewal for licenses that expire on or after April 1, 2009, a licensee who was initially licensed prior to January 1, 1998, or for whom an electronic record of the submission of fingerprints no longer exists, to: (a) furnish to the Department of Justice (DOJ) a full set of fingerprints for the purpose of conducting a criminal history record check and to undergo a state and federal criminal offender record information search conducted through the DOJ; (b) certify compliance with that requirement at the time of renewal; (c) disclose whether he or she has been convicted of any violation of the law in this state or any other state since he or she last applied for renewal; (d) disclose whether he or she has had a license denied or had a license disciplined by another licensing authority of California, another state, another agency of the federal government, or of another country.

(3) Amend section 2537 (VN Program) and section 2590 (PT Program)

VN Program – Section 2537

Existing law, B&P Code, sections 2892.6 and 2895, specify the current fees and fee ranges for the VN Program.

The BVNPT is proposing to make permanent the fee changes made in the emergency regulation to ensure sufficient funds are available to implement retroactive fingerprinting. The VN Program is adopting as permanent amendments to Sections 2537 to reflect the following fee changes:

VN Program

- Initial License Fees -- From \$120 to \$150
- Biennial License Renewal Fees -- From \$120 to \$150
- Delinquent Renewal Fees -- From \$60 to \$75

All of the other fees will remain the same as they were prior to the emergency regulations. The fee change is needed to ensure the fiscal solvency of the VN Program as it implements retroactive fingerprinting.

PT Program – Section 2590

Existing law, B&P Code, Section 4548, specifies the fees and fee ranges for the PT Program. The fee regulations (as they existed prior to the emergency) had been superseded by statutory amendments that set the new fees. Consequently, the fee amounts cited in the prior *regulation* were obsolete as of January 1, 2000.

The PT Program is making permanent the amendment to regulation Section 2590. The prior fee regulations became obsolete December 31, 1999, when statutory fee amounts were established on January 1, 2000. The Board proposes to adopt as permanent the emergency fee changes to ensure that sufficient funds are available to implement retroactive fingerprinting. The fee changes are:

- Initial License Fees -- From \$200 (statutorily) to \$300
- Biennial License Renewal Fees -- From \$200 (statutorily) to \$300
- Delinquent Renewal Fees -- From \$100 (statutorily) to \$150

All of the other fees established by the current statute will remain the same in this regulatory proposal.

(4) Amend section 2540.6 (VN Program) and 2592.6 (PT Program)

Prior to the emergency, the existing regulations specified that if a licensee wants to activate an inactive license, the licensee must submit a written request and evidence of 30 hours of approved continuing education taken during the two-year period immediately preceding the request for activation. This proposal would require, in addition to the above-mentioned requirement, that a licensee who was never fingerprinted by the Board or for whom a fingerprint record no longer exists furnish a full set of fingerprints as a condition of activating an inactive license. A change was made from the emergency regulation to make it clearer that a licensee need only comply with the fingerprint requirement once and not each time the license goes from inactive to active.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: Processing approximately 55,000 fingerprint records and the applicable disciplinary actions will necessitate adding 14.5 positions to the VN program and 2.5 positions to the PT program, as well as the related costs for the Office of the Attorney General and Office of Administrative Hearings. The current estimated cost per fiscal year is:

	<u>VN Program</u>	<u>PT Program</u>
FY 2009-10 =	\$2,068,000	\$518,000
FY 2010-11 =	\$3,260,000	\$896,000
FY 2011-12 =	\$1,642,000	\$398,000

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses: The Board has determined that this proposed regulatory action will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business: VNs and PTs, who have not previously been fingerprinted for the BVNPT or for whom a fingerprint record no longer exists, will be required to be fingerprinted at the time of license renewal, reactivation, or reinstatement. The one-time cost for a person to get fingerprinted is approximately \$65.00. The fee breakdown includes \$51.00 to the DOJ for conducting the background check and providing the criminal record report for DOJ and FBI, and the remaining \$14.00 to the vendor for fingerprinting the individual. The vendor's fee ranges from \$5.00 to \$45.00 with the average fee being \$14.00. Additionally, the VN and PT licensing fees will be raised to ensure that sufficient funds are available to fund this consumer protection action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The regulations will not have a significant adverse economic impact on businesses. There are approximately 750 vendors statewide, including small businesses that provide fingerprinting services. There should not be any cost impact on vendors because they are already equipped to provide the service. This regulation will generate revenue for the vendors of Live Scan.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board at 2535 Capitol Oaks Drive, Suite 205, Sacramento, California 95833.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Sophia Cornejo, Administrative Analyst
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Sacramento, CA 95833
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The backup contact person is:

Name: Marina Okimoto, Assistant Executive Officer
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Website Access – Materials regarding this proposal can be found at www.bvnpt.ca.gov.

(3/19/09)